



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,231	08/22/2006	Ya'akov Gabel	7044-X06-017	1518
27317 7590 08/10/2007 FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180			EXAMINER GINSBERG, OREN ISAAC	
			ART UNIT	PAPER NUMBER
			3709	
			MAIL DATE	DELIVERY MODE
			08/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/598,231		GABEL ET AL.	
	Examiner		Art Unit	
	Oren I. Ginsberg		3709	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on papers through 1 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: page 7 line 1, "andFigure" is believed to be in error for --and Figure--. Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 320. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 9-11 are objected to because of the following informalities: Method claims 9-11 are dependent upon apparatus claim 1. Claims that are dependent on an apparatus claim must also be an apparatus claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips 7,137,959 in view of Perner 6,770,040 and further in view of Dietz 6,685,658.

Regarding claims 1, 6-8, Phillips discloses an exercise device comprising: a horizontal frame 58, a vertical frame 56 supported by a mechanical mechanism 14, a seat 20 comprising a back rest mounted on the vertical frame, footholds 30a, 30b that are fastened to the user feet movable along a track 18 mounted on the horizontal frame, pulleys 46 positioned on the vertical frame wherein a cable 22a, 22b is stretched between the pulleys and horizontal frame, and an electric motor for adjusting the height of the seat 76.

Phillips teaches the invention as discussed above with the exception of the following claimed limitations taught by Perner: the seat has an arm rest 52 with a control panel mounted located on it wherein the control panel provides movement between a seated and upright position, as construed by www.dictionary.com:

Panel

Function: *noun*

6. a mount for for a surface or or section of a machine containing the controls and dials.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Phillips in view of Perner in order to make adjustment of the device easily accessible to the user.

Phillips in view of Perner teaches the invention as discussed above with the exception of the following claimed limitations as taught by Dietz: the horizontal frame is situated on wheels 2, 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Phillips in view of Perner and further in view of Dietz in order to make the device more mobile and allow a paraplegic easier access to using the device.

Regarding claim 3, Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations taught by Dietz: a rear control panel 21. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Phillips in view of Perner, further in view of Dietz, in order to allow another individual besides the user to adjust the machine posture.

Regarding claim 4, Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations: means for operating the device by voice activation commands. Applicant shows that a

Art Unit: 3709

joystick is an equivalent structure known in the art for voice operating means in the specification (Detailed Description paragraph 2 lines 4), as construed by www.dictionary.com:

Joystick

Function: *noun*

3: any leverlike switch for controlling, manipulating, guiding, or the like.

Therefore, because the joystick and voice activation commands were known art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a joystick for voice activation commands.

Regarding claim 5, Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations: the wheels are electrically driven. However, according to *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) it has been held that "broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art." See in MPEP 2144.04 III.

Claims 2, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillip in view of Perner, further in view of Dietz, and further in view of Gause 3,744,794.

Regarding claim 2, Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations taught by Gause: a saddle seat 13. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Phillips in view of Perner, further in view

Art Unit: 3709

of Dietz, and further in view of Gause in order to allow the user to sit comfortably on the exercise device for long periods of time.

Regarding claim 9, Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations taught by Gause: pelvic straps 33 and shoulder straps 48, 49 that are attached to the saddle. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Phillips in view of Perner, further in view of Dietz, and further in view of Gause in order to allow the user to exercise in a position that is not upright, as taught by Gause (column 1 lines 11-15).

Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillip in view of Perner, further in view of Dietz, and further in view of Disch 6,224,516.

Phillips in view of Perner and further in view of Dietz teaches the invention as discussed above with the exception of the following claimed limitations: the mechanical mechanism is an electrically activated piston or hydraulically activated piston. Disch shows that a motor is an equivalent structure known in the art for mechanical mechanism means (column 4 lines 57-63). Therefore, because the motor and pistons were known art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a motor for a piston.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oren I. Ginsberg whose telephone number is (571) 270-

Art Unit: 3709

3074. The examiner can normally be reached on Mon-Fri, alternate Fri off, 7:30-5:00 EST.

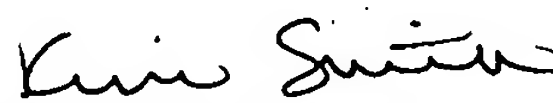
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OG



7/31/07


KIMBERLY S. SMITH
PRIMARY EXAMINER

7/31/07